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# A View From the Front Lines: Why Protecting Immigrant Workers is Essential for Immigration Reform and Vital to the Maintenance of a Healthy American Workforce

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A VIEW FROM THE FRONT LINES:  
WHY PROTECTING IMMIGRANT WORKERS  
IS ESSENTIAL FOR IMMIGRATION REFORM  
AND VITAL TO THE MAINTENANCE OF A  
HEALTHY AMERICAN WORKFORCE

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## I. INTRODUCTION

In 2009, a group of researchers from University of California, Los Angeles released the findings of a study of low-wage workers in New York, Chicago, and Los Angeles, aimed at assessing the prevalence of workplace violations in the nation's three largest cities.<sup>1</sup> The result was eye-opening for lawmakers: federal and state employment laws are not providing adequate protections to the most critical, and indeed the most vulnerable, members of the United States ("U.S.") workforce—immigrant workers. Among the report's findings, the fact that two-thirds of the workers surveyed suffered pay violations, losing roughly \$2,600 in annual wages, which is about fifteen percent of their yearly salaries, is especially alarming.<sup>2</sup> This report, along with others, indicates the need for immigration reform has reached critical levels.

Regrettably, the political discourse over immigration reform is entangled in America's culture wars.<sup>3</sup> Anti-immigrant activists maintain that immigrants come to the United States to take advantage of social welfare programs, health care services, and birthright citizenship. However, this anti-immigrant rhetoric does not adequately explain why people actually pack up and leave their home countries to come to the United States. In reality, immigrants come to America for one overarching reason: work.<sup>4</sup>

Commentators, politicians, judges, members of citizen militias, and others who fear that immigration is threatening our nation's cultural and economic integrity believe that undocumented immigrants must be deported, arrested, or otherwise punished.<sup>5</sup> Notably, the Naturalization Act

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1. See ANNETTE BERNHARDT ET AL., *BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES* 16 (2009), available at <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1> (studying "workplace violation prevalence" among non-managerial and non-professional, "front-line" employees).

2. *Id.* at 50.

3. See Eve Conant, *Razing Arizona*, *NEWSWEEK*, Aug. 16, 2010, at 34, 34–35, available at <http://www.newsweek.com/2010/08/07/razing-arizona.html> (assessing that, similar to the South African culture wars against apartheid, Latino organizations have rallied to punish the state of Arizona by forming a coalition centered around cultural identity).

4. See *The Hub Nation: Immigration Places America at the Centre of a Web of Global Networks. So Why Not Make It Easier?*, *ECONOMIST*, Apr. 24, 2010, at 32 [hereinafter *The Hub Nation*] (characterizing immigrants as an asset to America because of their hard-working attitude and entrepreneurial spirit).

5. See, e.g., Joseph Lelyveld, *The Border Dividing Arizona*, *N.Y. TIMES*, Oct. 15, 2006, § 6 (Magazine), at 42 (explaining how Republicans tried to save their majority in Congress by using the issues of immigration and border security as the main focus of the 2006 election). Curiously, some of these critics have actually relied on undocumented workers themselves to their own personal benefit. See, e.g., Michael Calderone, *Report: Lou Dobbs Employed Illegal Immigrants*, *YAHOO! NEWS* (Oct. 7, 2010, 9:04 AM), [http://news.yahoo.com/s/yblog\\_upshot/20101007cm\\_yblog\\_upshot/](http://news.yahoo.com/s/yblog_upshot/20101007cm_yblog_upshot/)

of 1790, which restricted citizenship to white persons serves to adequately illustrate the role that fear has historically played in the immigration debate. Yet, despite this long-held fear that the the United States is being overrun by immigrants, which historically manifested the in discrimination of southern European, Chinese, and other immigrant groups—the U.S. is a nation of immigrants.<sup>6</sup>

Immigration is a social and political issue that generates strong emotional feelings. On one side of the debate, we hear calls for sealing the borders and deporting undocumented immigrants. On the other side of the debate, we hear a call for the full inclusion of undocumented immigrants into broader society. No matter which passions are invoked when debating the issues, immigration reform is vital because without large-scale immigration the United States cannot field a competitive workforce.<sup>7</sup> This Article argues that, in the absence of a competitive workforce, the current standard of living in the United States will erode, and the nation's long term economic growth prospects will diminish.<sup>8</sup>

As a matter of economic policy, there is no other option but to undertake the task of reforming our immigration laws. Central to this undertaking is an analysis of the operative nexus connecting the American immigrant demographic to the needs of the economy and to federal and state wage and hour laws.

## II. THE ECONOMIC ASPECTS OF IMMIGRATION REFORM

Following the Enron and WorldCom scandals of the 1990's and the more recent mortgage crisis, it is not surprising that the primary concern of the average American in today's society is the restoration of the health and well-being of the U.S. economy. The effects of the Great Recession have been so devastating that leading economists, the U.S. government, and much of the public rightly feared that we just stood at the precipice

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report-lou-dobbs-employed-undocumented-immigrants (reporting that Lou Dobbs, a celebrated anti-immigrant talk show host, relied on undocumented laborers for the upkeep of his multimillion-dollar estate and for tending to his private stable of horses).

6. See *A Better Way: Utah May Offer a Better Model Than Arizona for Dealing with Illegal Immigrants*, *ECONOMIST*, Aug. 7, 2010, at 25, 26 (observing that while the people of Utah have a strong anti-immigrant sentiment, they still rally around an identity originating from the nineteenth century, when the success of the state was highly dependent on the labor of Irish and Chinese immigrants).

7. See *infra* Part II (comparing Brazil, India, China, Japan and Germany's economies and populations to that of the United States).

8. See *infra* Part II (proposing that because of the decline in the rate of native-born U.S. citizens, the U.S. will struggle to keep up with emerging economies).

of an economic depression.<sup>9</sup>

Upon entering office, President Obama assembled an all-star lineup of economists to tackle the floundering economy.<sup>10</sup> These economists looked to the unprecedented interventionist policies of the U.S. government during the Great Depression.<sup>11</sup> After all, it was the implosion of the American economy in the 1930's that gave license to the Roosevelt Administration to beat back the predatory and rapacious form of capitalism that had come to dominate the market.<sup>12</sup> The Roosevelt Administration, and many members of Congress understood that the country had veered away from a free market balance in which capital and labor were rationally and prudently deployed in the best interest of the nation.<sup>13</sup>

Both the Great Depression and the Great Recession were preceded by an accumulation of wealth in the hands of ever fewer individuals.<sup>14</sup> On both occasions, the drive for immediate, short-term profits created an overheated financial services sector whose meltdown resulted in large-scale destruction of American economic productivity.<sup>15</sup> A fundamental law of economics is that profits cannot increase indefinitely.<sup>16</sup> Specifically, an economy focused on short-term profits generated by the financial

9. See, e.g., *The Great Stabilization: The Recession Was Less Calamitous Than Many Feared. Its Aftermath Will Be More Dangerous Than Many Expect*, ECONOMIST, Dec. 19, 2009, at 15 (stipulating that without the drastic economic intervention of the government, the recession would have turned into a depression).

10. *See Off to Work They Go: Barack Obama Has Stacked His Cabinet with Clever Economists, but Can They Work Together? And What Will They Do?*, ECONOMIST, Nov. 29, 2008, at 31 (crediting Obama's economic team members—Larry Summers, Peter Orszag, Christina Romer, and Paul Volcker—as some of the best economists, with extensive and impressive economic experience).

11. *See How New a Deal?: Comparisons Between Barack Obama and FDR Are Misguided*, ECONOMIST, Nov. 22, 2008, at 46 (indicating that Obama's closest advisors consider the government intervention led by Roosevelt during the Great Depression an important area to study possible remedies to the recent recession).

12. See Michael Hirsh & Daniel Gross, *The Wisdom of Crowds: When Populist Rage Leads to Smart Policy*, NEWSWEEK, Feb. 8, 2010, at 26, 28–29 (explaining that during the Great Depression, an enraged general public focused on capitalist institutions—such as Wall Street and banks—and Roosevelt was able to heavily regulate those institutions because intervention was required to quell the public outrage).

13. See Irving Howe, *When America Entered the 20th Century*, N.Y. TIMES, Sep. 28, 1986, at 3, 46 (emphasizing that the strong rhetoric Roosevelt used to attack the high concentration of wealth and power also allowed him to persuade Congress to shift from a capitalist focus to a humanitarian one).

14. See ROBERT B. REICH, *AFTERSHOCK: THE NEXT ECONOMY AND AMERICA'S FUTURE* 22–27 (2010) (noting that “[t]he share of total income going to the richest [one] percent of Americans peaked in both 1928 and in 2007, at over [twenty-three percent]. The same pattern held for the richest one-tenth of one percent . . . . And . . . for the richest [ten] percent . . .”).

15. See *id.* at 25–26 (identifying in both eras a working class engaged in performing services that, once credit ran out, reduced spending—ultimately forcing business to reduce spending through mass layoffs).

16. See *id.* at 23 (“[I]t is an iron law of economics, as well as physics, that expanding bubbles eventually burst.”).

services sector—at the expense of a production-based economy—is predisposed to predatory investment schemes that destabilize the workforce.

In both economic downturns, the full weight of the economic destruction came crashing down upon the American middle class.<sup>17</sup> The recent financial downturn has left the U.S. economy struggling with high unemployment, rising poverty, and lost opportunity for individual advancement.<sup>18</sup> Meanwhile, at the same time, the productive capacity of emerging economies, like Brazil, India, and China, is expanding.<sup>19</sup> These emerging market countries have young, large populations;<sup>20</sup> China and India, for example, have populations of about 1.2 billion, and Brazil is home to nearly 200 million people.<sup>21</sup> Meanwhile, the populations of Japan and Germany, the developed world's first and second largest economies after to the United States, are aging and shrinking.<sup>22</sup>

Despite the declining birth rates of native-born U.S. citizens, the population of the United States continues to grow because of

17. See John Wheeler, *The Great Recession Has Hit the Middle Class the Hardest*, BIZNETCENTRAL (Dec. 28, 2010), <http://biznetcentral.com/2010/12/28/the-great-recession-has-hit-the-middle-class-the-hardest> (explaining that the middle class has been hit the hardest by the current recession, in large part as a result of drastic declines in home equity); cf. Reich, *supra* note at 14, at 23 (observing that a broad swath of Americans suffered during the Great Depression).

18. See BUREAU OF LAB. STAT., CURRENT POPULATION SURVEY 194 (2011), available at <http://www.bls.gov/cps/cpsaat1.pdf> (reporting a rise in unemployment from 5.8% in 2008 to 9.6% in 2010); Erik Eckholm, *Recession Raises Poverty Rate to 15-Year High*, N.Y. TIMES, Sept. 16, 2010, at A1, available at <http://www.nytimes.com/2010/09/17/us/17poverty.html> (reporting the percentage of Americans living in poverty in 2009 at 14.3 percent—the highest since 1994).

19. Cf. *Nipping at Their Heels: Firms from the Developing World are Rapidly Catching Up with Their Old-World Competitors*, ECONOMIST, Jan. 20, 2011, at 80, available at [http://www.economist.com/node/17957117?story\\_id=17957117](http://www.economist.com/node/17957117?story_id=17957117) (tracking the resilience of businesses in Brazil, Russia, India, and China following the financial crisis as compared with the more sluggish multinationals from developed nations).

20. See, e.g., Jeff Schlegel, *Rebuilding with BRICS: The Big Four of Emerging Markets are Back in Favor*, FIN. ADVISOR MAG., July 2009, available at <http://www.fa-mag.com/component/content/article/4269.html?issue=110&magazineID=1&Itemid=73> (attributing much of India and China's growth to their young population and growing middle classes).

21. Shamim Adam et al., *Evergreen Rises on Lure of \$100 Billion China-India Trade: Freight Markets*, BLOOMBERG (Feb. 07, 2011, 11:00 AM) <http://www.bloomberg.com/news/2011-02-07/fedex-maersk-add-shipping-routes-for-china-india-prize-freight-markets.html>; *Brazil*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/br.html> (last visited Mar. 1, 2011).

22. See WARREN SANDERSON, CTR. FOR INTERGENERATIONAL STUDIES, LOW FERTILITY AND POPULATION AGING IN GERMANY AND JAPAN: PROSPECTS AND POLICIES 5 (May 2, 2008), available at <http://cis.ier.hit-u.ac.jp/Japanese/pdf/shoushika/SandersonWorkshop.pdf>.

immigration.<sup>23</sup> For the U.S. to remain economically preeminent, its population must remain one of the largest in the world.<sup>24</sup> Equally important is a balanced demographic ratio between young and old. Population growth is crucial to America's long-term economic security.<sup>25</sup>

In 1930, the U.S. population was 122,775,046,<sup>26</sup> with about forty percent of the population under twenty years of age,<sup>27</sup> and immigrants comprising just over eleven percent of the total population.<sup>28</sup> Today, the U.S. population stands at 308,700,000<sup>29</sup> with less than twenty-eight percent under the age of twenty.<sup>30</sup> Immigrants, however, still comprise merely twelve percent of the U.S. population.<sup>31</sup> Population growth is projected to

23. See Sharon Jayson, *CDC: Birthrates Decline Overall*, USA TODAY, Dec. 21, 2010, available at [http://www.usatoday.com/yourlife/parenting-family/babies/2010-12-22-birthdata22\\_ST\\_N.htm](http://www.usatoday.com/yourlife/parenting-family/babies/2010-12-22-birthdata22_ST_N.htm) (reporting that birthrate levels are at record lows in the United States); Mark W. Nowak, *Immigration and U.S. Population Growth: An Environmental Perspective*, NEGATIVE POPULATION GROWTH, <http://www.npg.org/specialreports/imm&uspopgrowth.htm> (last visited Apr. 14, 2011) (“[Sixty percent] of the population increase in the United States between 1994 and 2050 will be attributable to immigration and the descendants of immigrants.”).

24. See *Population: Growth Is Good*, ECONOMIST: FREE EXCH. (Dec. 23, 2010, 2:11 PM), <http://www.economist.com/blogs/freeexchange/2010/12/population> (arguing that slow population growth may lead to greater government debt).

25. See Adam Ozimek, *A Strange Model of the Economy*, MODELED BEHAVIOR (Dec. 22, 2010), <http://modeledbehavior.com/2010/12/22/a-strange-model-of-the-economy/> (observing that an aging population requires governmental support and that it becomes a greater burden without a significant working population to generate that financial support).

26. BUREAU OF THE CENSUS, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, at 9 tbl. 2 (1933).

27. See BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1931, at 5 (1931) (recording that in 1930 about nine percent of the population was younger than five years of age, twenty percent was between five and fourteen years of age, and more than nine percent was between the ages of fifteen and nineteen).

28. See U.S. CENSUS BUREAU, PROFILE OF FOREIGN-BORN POPULATION IN THE UNITED STATES: 2000, § 1, at 8 (2001) [hereinafter PROFILE OF FOREIGN-BORN POPULATION] (recounting immigration data from the 1930 census, in regards to immigration, for purposes of comparison to immigration data from the 2000 census).

29. Haya El Nasser, et al., *2010 Census: Slowest Growth Since Great Depression*, USA TODAY, Feb. 3, 2011, available at <http://content.usatoday.net/dist/custom/gci/InsidePage.aspx?cId=tallahassee&sParam=41887628.story>.

30. *United States—Age and Sex*, U.S. CENSUS BUREAU, [http://factfinder.census.gov/servlet/STTable?\\_bm=y&-geo\\_id=01000US&-qr\\_name=ACS\\_2009\\_1YR\\_G00\\_S0101&-ds\\_name=ACS\\_2009\\_1YR\\_G00\\_&-\\_lang=en&-redoLog=false&-state=st&-CONTEXT=st](http://factfinder.census.gov/servlet/STTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2009_1YR_G00_S0101&-ds_name=ACS_2009_1YR_G00_&-_lang=en&-redoLog=false&-state=st&-CONTEXT=st) (last visited Mar. 1, 2011) [hereinafter *Age and Sex Statistics*].

31. Jeanne Batalova & Aaron Terrazas, *Frequently Requested Information on Immigrants and Immigration in the United States*, MIGRATION INFO. SOURCE, (Dec. 2010), <http://www.migrationinformation.org/feature/display.cfm?ID=818> (reporting immigrants to comprise 12.5 percent of total U.S. population).



continue, reaching 439 million by 2050<sup>32</sup> with eighty-two percent of this growth coming from immigration.<sup>33</sup> While the percentage of foreign-born residents of the United States is no greater today than it was nearly eighty years ago,<sup>34</sup> the national percentage of younger individuals has declined significantly.<sup>35</sup> This portends substantial economic challenges for the economy as the country grows ever older.

Currently, roughly thirty-three percent of immigration into the United States comes from Asia and Europe, with less than fifty-seven percent arriving from Mexico and Latin America.<sup>36</sup> Nearly sixty-six percent of immigrants in the United States are either naturalized citizens or legal, permanent residents, while undocumented immigrants account for thirty percent.<sup>37</sup> The employment rate for male, undocumented workers is ninety-six percent—substantially higher than that of their legal, immigrant counterparts.<sup>38</sup> Not surprisingly, undocumented workers earn considerably less than U.S. citizens.<sup>39</sup>

It is against the backdrop of the Great Recession, with competitive pressures from emerging markets, and an anti-immigrant climate, that the rights of the American laborer must be defended. In hindsight, it is clear that the challenges presented by the Great Depression necessitated the enactment of the Fair Labor Standards Act (“FLSA”) as a means to protect the health

32. See Press Release, Robert Bernstein & Tom Edwards, U.S. CENSUS BUREAU, *An Older and More Diverse Nation by Midcentury* (Aug. 14, 2008), *available at* <http://www.uscentralonline.net/uploadedfiles/An%20Older%20and%20More%20Diverse%20Nation%20by%20Midcentury-US%20Census%20Bureau%20article%20v2.pdf> (last visited Mar. 1, 2011) (predicting that the United States will be both older and more ethnically diverse by 2050).

33. Adriana Garcia, *Whites to Become Minority in U.S. by 2050*, REUTERS, Feb. 12, 2008, *available at* <http://www.reuters.com/article/2008/02/12/us-usa-population-immigration-idUSN1110177520080212>. Forecasts also indicate that by 2050, non-Hispanic whites will no longer constitute a majority of the U.S. population. *Id.*

34. See PROFILE OF FOREIGN-BORN POPULATION, *supra* note 28, at 8 (providing that according to the 2000 U.S. Census, the percentage of foreign-born individuals living in the U.S. was the highest since 1930).

35. *Compare Age and Sex Statistics*, *supra* note 30, with BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1931, *supra* note 27, at 5 (providing that in 2009, only twenty-seven percent of the population was under twenty years old, as compared to thirty-eight percent in 1930).

36. ROBERT SHAPIRO & JIWON VELLUCCI, NEW POLICY INSTITUTE, THE IMPACT OF IMMIGRATION REFORM ON THE WAGES OF AMERICAN WORKERS 1 (2010), *available at* <http://ndn.org/paper/2010/impact-immigration-and-immigration-reform-wages-american-workers>.

37. *Id.* (providing that while just one-third of all workers earns less than twice the minimum wage, two-thirds of undocumented workers earn that amount).

38. See JEFFREY S. PASSEL, ET. AL., URBAN INST., UNDOCUMENTED IMMIGRANTS: FACTS AND FIGURES 1 (2004), *available at* <http://www.urban.org/url.cfm?ID=1000587> (noting that on average, the higher participation in the work force of immigrant workers is due to the younger average age of undocumented men and a reduced likelihood of undocumented workers opting out of work force participation due to disability, retirement, or schooling).

39. *Id.*



and welfare of the U.S. workforce.<sup>40</sup> Likewise, the pressures created by the current economic crisis necessitate legislation to protect the U.S. immigrant workforce.

### III. THE FAIR LABOR STANDARDS ACT

#### A. *The FLSA and Undocumented Immigrants*

The FLSA is the preeminent civil rights legislation protecting workers' pay. The objective of the FLSA is the elimination of "labor conditions detrimental to the maintenance of the minimum standard[s] of living necessary for health, efficiency, and general well-being of workers . . . ."<sup>41</sup> So, what does the FLSA have to do with immigration reform? In short, the answer is quite a lot.

It is often said that immigrants perform jobs that Americans will not. Without questioning the validity of this assertion, the United States has not shut its doors to immigration because native-born Americans refuse to perform certain jobs. The door to immigration has been open since Colonial America because the U.S. economy relies on the manpower of immigrant laborers to remain competitive.

While immigrants fill all types of jobs in the United States, undocumented immigrants typically perform intensive manual labor in industries like construction, agriculture, and food service.<sup>42</sup> Without the manpower resources of the undocumented immigrants who reside in the United States, many if not all, American business enterprises would suffer substantial and adverse economic consequences.

While most employers comply with the FLSA, many take advantage of the undocumented status of immigrant laborers. One Government Accounting Office study found that non-profit and government agencies across the country reported that "day laborers complained at least once a week about nonpayment of wages."<sup>43</sup> The failure to compensate undocumented immigrants in accordance with the federal and state wage

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40. See Fair Labor Standards Act of 1938, 29 U.S.C. § 201–219 (2006 & Supp. IV 2010) (providing that private sector employers shall provide employees, among other protections, a baseline minimum wage and overtime).

41. See *id.* at § 202(a) (providing that the absence of minimum standards for workers obstructs the national economy and "constitutes an unfair method of competition in commerce").

42. See JEFFREY S. PASSEL & D'VERA COHN, PEW RESEARCH CENTER, A PORTRAIT OF UNDOCUMENTED IMMIGRANTS IN THE UNITED STATES fig. 5 (2009), available at <http://pewresearch.org/pubs/1190/portrait-unauthorized-immigrants-states>.

43. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-02-925, WORKER PROTECTION: LABOR'S EFFORTS TO ENFORCE PROTECTIONS FOR DAY LABORERS COULD BENEFIT FROM BETTER DATA AND GUIDANCE 14–15 (2002) (reporting that over half of day laborers do not receive the wages that are due to them under state and federal law).

and hour laws is widespread and frequent, extending well beyond day laborers.<sup>44</sup>

Nowadays, just as during the Great Depression, workers are forced to suffer the twin evils of overwork and underpay. It was amidst the unprecedented economic challenges of the Great Depression that Congress enacted the FLSA “to protect ‘the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others.’”<sup>45</sup>

In enacting the FLSA, Congress intended to eliminate substandard working conditions by establishing a minimum wage and requiring employers to pay an overtime premium of one and one half times an employee’s regular hourly rate for work exceeding forty hours per week.<sup>46</sup> President Franklin D. Roosevelt heralded the FLSA as “the most far-reaching, far-sighted program for the benefit of workers ever adopted here or in any other country.”<sup>47</sup>

By design, the FLSA’s purpose is “remedial and humanitarian.”<sup>48</sup> To effectuate its goals, the FLSA requires courts to interpret its application broadly.<sup>49</sup> For instance, the FLSA “defines the verb ‘employ’ expansively to mean to ‘suffer or permit to work.’”<sup>50</sup> This definition of employ is “the broadest definition that has ever been included in any legislation.”<sup>51</sup> Moreover, the Supreme Court has directed courts to expansively construe the term “employee;” which, under the FLSA, is defined as “any individual

44. See ANNETTE BERNHARDT ET AL., *BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA’S CITIES* 5 (2009) (finding that foreign-born workers are victims of the highest incidence of FLSA violations compared to even native-born minority groups within the United States).

45. *Benshoff v. City of Va. Beach*, 180 F.3d 136, 140 (4th Cir. 1999) (quoting *Tenn. Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 597 (1944)).

46. See 29 U.S.C. § 202 (declaring that the policy considerations contained in the FLSA including the maintenance of worker well-being required Congressional regulation of industry); § 206 (requiring employers to pay minimum wages to employees covered under the FLSA); § 207(a)(1) (stipulating overtime compensation if a worker’s workweek is longer than forty hours).

47. Franklin D. Roosevelt, *Fireside Chat on Party Primaries* (Jun. 24, 1938), reprinted in 1938 *THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT: THE CONTINUING STRUGGLE FOR LIBERALISM* 391, 392 (Samuel I. Rosenman ed., 1941).

48. *Tenn. Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 597 (1944), superseded by statute, Portal-to-Portal Act of 1947, Pub. L. No. 80-49, 61 Stat. 84 (1947) (codified as amended at 29 U.S.C. § 254 (2006)).

49. *Id.*

50. *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992) (citing 29 U.S.C. § 203(g)).

51. *United States v. Rosenwasser*, 323 U.S. 360, 363 n.3 (1945) (observing the broad reach of the term “employee” that Congress intended under FLSA is based, in part, on Senator Black’s statements on the Senate floor during the congressional debate of the FLSA (citing 81 CONG. REC. 7657 (1937) (statement of Sen. Hugo Black))).

employed by an employer.”<sup>52</sup>

There is no enabling language contained in the FLSA that extends its provisions to undocumented immigrants.<sup>53</sup> However, FLSA coverage has been extended to undocumented immigrants by the courts as consistent with congressional intent and U.S. immigration policy.<sup>54</sup> If the protections of the FLSA were not afforded to undocumented immigrants, a perverse economic incentive for employers to seek out and hire undocumented immigrants at rates lower than the minimum wage would emerge. Such a policy would stimulate an inflow of undocumented immigrants and put downward pressure on the wages earned by all Americans. The end result would be the denigration of the health and welfare of the entire American workforce. Thus, enforcing the wage and hour laws on behalf of undocumented immigrants—a substantial portion of the American workforce—is sound economic policy.

It is no accident that courts have interpreted the FLSA’s definition of employee to extend “to citizens and aliens alike [irrespective of] whether such aliens are documented or undocumented . . . .”<sup>55</sup> Some courts have gone so far as to hold employers liable for retaliation if they report an undocumented laborer to immigration authorities for asserting their rights under the FLSA.<sup>56</sup>

Despite the right of undocumented immigrants to avail themselves of the FLSA, studies show that undocumented immigrants are reluctant to report a variety of labor and employment law violations because they feel insecure about their immigration status.<sup>57</sup> As one court explained:

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52. 29 U.S.C. § 203(e)(1). *See Rutherford Food Corp. v. McComb*, 331 U.S. 722, 728 (1947) (confirming that the FLSA’s definition of “employ” is broad and reiterating that this breadth is conferred to the determination of who is an “employee” for purposes of the Act).

53. *See generally* 29 U.S.C. §§ 202–218(c) (providing no jurisdictional bar (or grant) based on an employee’s immigration status).

54. *See, e.g., Flores v. Amigon*, 233 F. Supp. 2d 462, 464 (E.D.N.Y. 2002) (holding that extension of FLSA coverage to undocumented workers actually furthers the goals of the Immigration Reform and Control Act of 1986 because without FLSA coverage for undocumented immigrants, employers would be incentivized to hire undocumented workers in an effort to skirt federal wage and hour regulations).

55. *In re Reyes*, 814 F.2d 168, 170 (5th Cir. 1987). *See Patel v. Quality Inn S.*, 846 F.2d 700, 704 (11th Cir. 1988) (“FLSA’s coverage of undocumented aliens is fully consistent with the [Immigration Reform and Control Act of 1986] and the policies behind it.”).

56. *See, e.g., Contreras v. Corinthian Vigor Ins. Brokerage Inc.*, 25 F. Supp. 2d 1053, 1059 (N.D. Cal. 1998) (denying the defendant employer’s motion to dismiss an undocumented immigrant’s claim, alleging retaliation for filing a claimed violation of the FLSA against her employer).

57. *See Michael J. Wishnie, Immigrants and the Right to Petition*, 78 N.Y.U. L. REV. 667, 676–79 (2003) (reporting the statistics of a survey that found that about thirty percent of workers did not inform Occupational Safety and Health Administration about their employer’s violations because they feared deportation).

Many of these workers are willing to work for substandard wages in our economy's most undesirable jobs. While documented workers face the possibility of retaliatory discharge for an assertion of their labor and civil rights, undocumented workers confront the harsher reality that, in addition to possible discharge, their employer will likely report them to the [immigration enforcement authorities] and they will be subjected to deportation proceedings or criminal prosecution . . . . As a result, most undocumented workers are reluctant to report abusive or discriminatory employment practices.<sup>58</sup>

Knowing that undocumented immigrants are vulnerable, unscrupulous employers willfully ignore immigration status during hiring and save money assembling a workforce that is unlikely to report violations of employee rights.<sup>59</sup> While these employers choose to circumvent the immigration laws at the time of hiring, they callously threaten their undocumented workers with the same laws if they complain.<sup>60</sup>

These unscrupulous employers are not only "gaming the system," but they are also undermining U.S. labor and immigration policy objectives. To balance the leverage that employers have over undocumented immigrants, it is essential that FLSA enforcement take priority over immigration enforcement. By excluding a worker's immigration status from the FLSA enforcement calculus, undocumented workers are less likely to forgo reporting wage and hour law violations or shy away from joining FLSA litigation.<sup>61</sup>

Experience shows that when an employer fails to properly pay wages to one employee, the employer is likely to operate under a common scheme, practice, or policy of paying all similarly situated employees less than their due wages. At the heart of the FLSA's remedial attributes is the permissive joinder device of 29 U.S.C. § 216(b), which prescribes the issuance of notice to a collective class of similarly situated employees for the joint

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58. *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1064–65 (9th Cir. 2004) (internal citations omitted) ("The aliens themselves are vulnerable to exploitation because they cannot complain of substandard working conditions without risking deportation." (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 879 (1975))).

59. *See id.* at 1072.

60. *See Montoya v. S.C.C.P. Painting Contractors, Inc.*, 530 F. Supp. 2d 746, 750 (D. Md. 2008) (couching the need for preventing employers from collaterally defending alleged FLSA violations on the grounds of the plaintiffs' immigration status as being necessary to "the effectiveness of the FLSA"); *see also* *Rivera*, 364 F.3d at 1065 (speculating that allowing an employer to inquire into a worker's immigration status would allow it to threaten the worker that raises a legal claim against the employer with deportation).

61. *See Zeng Liu v. Donna Karan Int'l, Inc.*, 207 F. Supp. 2d 191, 192–93 (S.D.N.Y. 2002) (noting that injury that potentially would befall an FLSA claimant-worker far outweighs any need for its disclosure during the litigation of alleged FLSA violations).

prosecution of statutory wage violations.<sup>62</sup> The mandate given to a plaintiff to bring suit on his own behalf or on behalf of similarly situated employees is perhaps the greatest remedial aspect of the FLSA, aimed at preserving the health and welfare of laborers industry-wide for the benefit of the American public.<sup>63</sup>

*Marroquin v. Canales*,<sup>64</sup> brought by CASA de Maryland<sup>65</sup> on behalf of a group of undocumented day laborers, illustrates the interplay between the needs of the economy, the treatment of undocumented day laborers, and the remedial attributes of the FLSA. In *Marroquin*, the defendant employer hired about 150 Latino immigrant men of limited education, income, and resources as day laborers to perform debris removal work in the aftermath of Hurricane Katrina.<sup>66</sup> The day laborers were hired in Maryland and transported by vans to Mississippi, where they were promised lodging and ten dollars per hour for their work.<sup>67</sup> The day laborers began work immediately upon their arrival at dawn and were housed in tents, trailers, and apartments.<sup>68</sup> Between twelve and sixteen people were lodged in each trailer with four to six people sleeping in each room.<sup>69</sup> In the lawsuit, the laborers claimed that defendants failed to pay them federal minimum wage and overtime wages. They sought collective action certification of the lawsuit pursuant to § 216(b) on their own behalf and on behalf of similarly situated employees.<sup>70</sup> In certifying the collective action and authorizing notice to similarly situated plaintiffs, the court held that the “notification effort is warranted in light of the testimony produced, the importance of adequate notification in an ‘opt-in’ regime such as this, the nature of this population and the defendants’ apparent failure to maintain adequate records.”<sup>71</sup>

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62. See, e.g., *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 167, n.1, 170 (1989) (demonstrating that any employee may bring an action on behalf of similarly situated groups of employees as long as she has their written consent implying that they have received accurate and timely notice of the proceedings under § 216(b)).

63. See *Id.* (stating that the FLSA aims to facilitate notice and remedy to all those affected by the claim and to expedite the judicial process).

64. 505 F. Supp. 2d 283 (D. Md. 2007).

65. CASA de Maryland, Inc. is the largest immigrants’ rights organization in the state of Maryland. The organization runs five worker centers throughout the state and offers a number of services to the community including education, vocational training, financial literacy, social services, health access and promotion, and legal services. *History*, CASA DE MARYLAND, <http://www.casademaryland.org/about-mainmenu-26/history-mainmenu-63> (last visited June 21, 2011).

66. *Marroquin*, 505 F. Supp. 2d at 287–88.

67. *Id.*

68. *Id.* at 288 & n.3.

69. *Id.* at 288, n.3.

70. Second Amended Complaint at 3, *Marroquin v. Canales*, 505 F. Supp. 2d 283 (D. Md. 2007) (No. CCB-05-3393), 2005 WL 4678916 at \*1.

71. *Marroquin v. Canales*, 236 F.R.D. 257, 262 (D. Md. 2006).

In 2005, a *New York Times* article drew attention to the rampant wage and hour law violations affecting the 2.3 million people who work in the janitorial services industry.<sup>72</sup> The root causes of these statutory violations were attributed to the fact that “cleaning contractors frequently hire immigrants, often without proper papers and at low wages, trying to squeeze out profits as they submit rock-bottom bids to win business. The immigrant workers dare not complain about safety or minimum-wage violations for fear of being fired—and possibly deported.”<sup>73</sup> At that time, it was estimated that ninety percent of the janitors in Los Angeles alone were immigrants and, of these, half were undocumented.<sup>74</sup>

The widespread employment of undocumented immigrants in the janitorial services industry at substandard wages resulted in liability for these statutory violations to several well-known companies. For instance, in 2005, Wal-Mart agreed to an \$11 million settlement with the Department of Justice after twelve Wal-Mart contractors pleaded guilty to employing 350 undocumented workers as janitors in stores across twenty-one states.<sup>75</sup> Similarly, a Target contractor entered into a \$1.9 million settlement after the Department of Labor discovered that 775 immigrant janitors in several states had been refused overtime pay.<sup>76</sup> In addition, the largest supermarket chains in California settled with 2,000 janitors—many of whom were undocumented—for \$22.4 million over allegations that many of the affected workers received substantially less than minimum wage while working seven nights a week.<sup>77</sup>

These examples illustrate the realities of many undocumented laborers who work in the shadows of our society, performing the sort of back-breaking physical work that makes the lives of most Americans more comfortable and far more affordable. When walking into our homes, our supermarkets, or our big-box retailers, it is not at the forefront of our minds that the foundations have been laid, the floors have been cleaned, and the food has been processed and packaged by immigrant laborers.

In the examples cited above, employers assembled workforces that relied extensively on undocumented immigrants. These undocumented immigrants uncharacteristically asserted their rights under the FLSA. Yet, for every FLSA wage claim brought, dozens more go unasserted.

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72. See Steven Greenhouse, *Among Janitors, Labor Violations Go with the Job*, N.Y. TIMES, July 13, 2005 at A1, available at <http://www.nytimes.com/2005/07/13/national/13janitor.html?pagewanted=all>.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* (reporting that the janitors were receiving an hourly rate of just \$3.50).



The importance of the FLSA as a tool in promoting the health and welfare of the U.S. economy cannot be overstated. If the courts and the Department of Labor vigorously enforce the wage and hour laws on behalf of undocumented immigrants, the ability of unscrupulous employers to exploit U.S. immigration policy and undermine the health of the U.S. workforce will be dramatically curtailed. Violations of wage and hour laws result in huge costs to public coffers since the full amount of taxes due are not paid to state and federal authorities.

To combat the rampant flouting of the FLSA, plaintiffs' lawyers are empowered to act as "private attorneys general" in the enforcement of wage and hour laws and earn their fees under the FLSA's fee shifting provisions.<sup>78</sup> By empowering the individual laborer to assert claims on behalf of similarly situated employees and by awarding attorneys fees, the FLSA's permissive joinder provisions operate like similar provisions of Title VII.<sup>79</sup> By acknowledging the undeniable reality that immigration is essential to the growth and prosperity of the U.S. economy and by recognizing that the vast majority of undocumented immigrants are gainfully employed, we can accept that zealous enforcement of the FLSA in favor of undocumented immigrants is essential to the health and well-being of the of the U.S. economy.

### *B. The Role of Legal Service Organizations.*

The most important public service provided by legal service organizations like CASA de Maryland is community education.<sup>80</sup> Considering the limited resources available to organizations that focus their efforts on legal advocacy for immigrant workers, the task of defending

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78. See 29 U.S.C. § 216(b) (2006) ("Any employer who violates the provisions of [the FLSA] shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages . . . [including] a reasonable attorney's fee to be paid by the defendant, and the costs of the action."); cf. *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1065 (9th Cir. 2004) (holding that a similar provision contained in Title VII of the Civil Rights Act of 1964 allows alleged discriminatees to act as "private attorneys general" in effectuating the purpose of Title VII).

79. See 29 U.S.C. § 216(b) ("An action . . . may be maintained against any employer . . . by any one or more employees for and in behalf of himself or themselves and other employees similarly situated."); cf. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 45 (1974) ("[T]he private right of action remains an essential means of obtaining judicial enforcement of Title VII . . . . In such cases, the private litigant not only redresses his own injury but also vindicates the important congressional policy against discriminatory employment practices." (alterations in original)).

80. CASA de Maryland's legal staff provides "Know Your Rights" presentations to groups of day laborers, domestic workers, and tenants' associations on a range of topics including wage and hour law, workers' compensation, employment discrimination, and general housing issues. *Know Your Rights*, CASA DE MD., [http://www.casademaryland.org/index.php?option=com\\_content&view=article&id=743&Itemid=126](http://www.casademaryland.org/index.php?option=com_content&view=article&id=743&Itemid=126) (last visited Mar. 15, 2011).



the rights of those who have been wronged by their employers cannot be accomplished if the worker community is not empowered to advocate on its own behalf. Therefore, enabling workers to recognize when their rights are being infringed upon and to take the necessary steps to preserve their ability to seek legal remedies is a critical component of a grassroots immigrant's rights mission.

Far too often, aggrieved workers come to CASA with stories of employers who acknowledge their unlawful acts with impunity because of the workers' inability to pay for legal representation or current unlawful immigration status.<sup>81</sup> Despite the fact that the right to recover wages does not depend on immigration status or legal representation, the threat of reporting a particular worker or group of workers to law enforcement authorities is commonplace and plays a significant role in deterring low-wage workers from reporting workplace abuse.<sup>82</sup>

At times, the physical and psychological abuse suffered by low-wage workers extends far beyond the failure to pay appropriate wages. In one instance, a female grocery store clerk who initially complained of wage and hour violations later revealed that her employer had also sexually assaulted her. The employer forced her to engage in sexual acts and threatened to have her deported and separated from her young daughter if she refused. Due to a lack of physical force in the assault, her complaint with the police was not investigated and her only recourse was to seek a peace order, temporarily restricting her assailant's ability to contact her. This story illustrates the harsh realities of living in a state of perpetual fear and unchecked vulnerability. Viewed through this lens, it is easy to understand how so many unscrupulous employers formulate "wage chiseling" business models.<sup>83</sup>

#### IV. CASE STUDY: MARYLAND WAGE AND HOUR LAWS

Maryland boasts two of the strongest employment laws in the country: the Maryland Wage and Hour Law<sup>84</sup> and the Maryland Wage

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81. See CASA OF MARYLAND, WAGE THEFT: HOW MARYLAND FAILS TO PROTECT THE RIGHTS OF LOW WAGE WORKERS 5-7 (2007) [hereinafter WAGE THEFT], available at <http://www.casademaryland.org/storage/documents/wagetheft.pdf> (documenting six pervasive practices by employers that deny immigrant workers their employment and labor rights).

82. Cf. *Rivera*, 364 F.3d at 1064-65 (noting the reluctance of undocumented workers to report employers, leaving them vulnerable to exploitation and substandard working conditions).

83. See WAGE THEFT, *supra* note 81, at 4 ("Thus while it is incredibly difficult to get by, let alone support a family on the minimum wage, any wage violations that chisel away at already-low take-home pay make survival even harder.").

84. MD. CODE ANN., LAB. & EMPL., §§ 3-401-3-431 (LexisNexis 2008 & Supp. 2010).

Payment and Collection Act.<sup>85</sup> Perhaps the most impressive statutory protection provided by these laws is the provision that allows for an award of treble damages in cases where a defendant is found to be delinquent on wage payments to employees.<sup>86</sup> Maryland's Governor, Martin O'Malley, recently signed into law a bill clarifying the state's definition of "wage" as including overtime pay.<sup>87</sup> In doing so, he expanded the reach of the Maryland Wage Payment and Collection Act by allowing employees to sue for unpaid overtime wages and permitting judges to award treble damages in the absence of a genuine dispute over the payment of wages.<sup>88</sup>

Theoretically, the treble damages provision, which is more severe than the standard double damages provision found in the federal Fair Labor Standards Act, provides a convincing deterrent to unscrupulous employers that seek to exploit low-income workers and rob them of their hard-earned wages. Unfortunately, in this case, theory and practice fail to align. Lack of enforcement mechanisms and extremely limited access to resources make participation in the legal process and self-advocacy virtual impossible for the low-wage worker community.

These barriers are exacerbated when immigrant workers lack sufficient English language skills. In addition, the fact that most of these individuals are unaware of their rights—or of the avenues of relief that may be available to them should those rights be violated—results in millions of workers left exposed and unprotected. Aggressive, predatory employers take advantage of these enforcement shortcomings and turn wage theft and exploitation into a common business practice. Low-income workers often "attest to the devastating effects of wage theft" on their efforts to overcome their marginalized status in society.<sup>89</sup> These workers struggle "to cover basic expenses for rent, food, and medical costs, and [are frequently unable to remit wages] overseas to families who depend on that income for survival."<sup>90</sup> Yet, wage theft largely remains a consequence-free practice for employers.

Assuming that an aggrieved employee is aware of her rights to a minimum wage and overtime and has been refused payment by her employer, what can she do? Many low-wage immigrant workers feel as if there is not much available to them in terms of legal redress. Although a worker may have the right to take a claim for unpaid wages to court, the

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85. LAB. & EMPL., §§ 3-501–3-509.

86. LAB. & EMPL., § 3-507.2(b).

87. 2010 Md. Laws 1158–60.

88. LAB. & EMPL., § 3-507.2(b) (providing employees the ability to recover three times their actual damages for willful employer violations of Maryland Wage and Hour laws).

89. WAGE THEFT, *supra* note 81, at 1.

90. *Id.*

reality is that there is a high likelihood that the employer is judgment proof or will not respond to a court summons. This may be because the employer is truly destitute or, more likely, has put its assets in someone else's name, making collection on a judgment almost impossible.

For these immigrant workers, taking time off to prepare testimony and later attend a court hearing can be a costly proposition as well as discouraging if the employer, cognizant of the legal pitfalls, does not show up to court. The chance in these cases is slim of either collecting back wages or finding available resources to aid the immigrant worker's collection efforts. From the perspective of the unscrupulous employer, there are no incentives to appear before a judge and explain why wages were withheld in the first place.

The resources available at the state level are equally inefficient. The Maryland Department of Labor, Licensing and Regulation ("DLLR") is the state agency tasked with investigating and resolving unpaid wages and other employment disputes in conjunction with the Attorney General's Office.<sup>91</sup> In order to file a claim for wages, an employee must fill out a form, available online in English and Spanish, and submit that form and any supporting documentation to the state agency by mail.<sup>92</sup> Complaints may also be made over the phone, but Spanish-speaking complainants are often discouraged by long, automated messages in English that they cannot understand.<sup>93</sup> Additionally, due to lack of funding from the State, the size of DLLR's investigatory staff is well below what is necessary to address the overwhelming number of complaints received each year.<sup>94</sup> This staffing shortage is further complicated by the very limited number of Spanish-speaking investigators in an area where many of the victims of the most egregious "wage chiseling" practices are only able to communicate in Spanish.<sup>95</sup>

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91. See MD. DEP'T OF LAB. LICENSING & REGULATION, THE MARYLAND GUIDE TO WAGE PAYMENT AND EMPLOYMENT STANDARDS 5 (2010) [hereinafter MD. WAGE PAYMENT & EMPLOYMENT STANDARDS], available at <http://www.dllr.state.md.us/labor/wagepay/mdguidewagepay.doc> (describing the Employment Standard Service's investigation process and the possibility of criminal charges brought on behalf of the employee by the Attorney General).

92. MD. DEP'T OF LAB. LICENSING & REGULATION, WAGE CLAIM FORM, available at <https://www.dllr.state.md.us/forms/essclaimform.doc> (last visited Feb. 17, 2011) [hereinafter WAGE CLAIM FORM].

93. MD. WAGE PAYMENT & EMPLOYMENT STANDARDS, *supra* note 91, at 5.

94. WAGE THEFT, *supra* note 81, at 10 (discussing staffing cuts, from a high of twenty investigators to six or fewer in recent years, making it impossible to sufficiently investigate the claims received).

95. See *id.* at 15 (asserting the need for the Employment Standards Division to provide information on rights in various languages to accommodate the large population of non-English speakers in the Maryland workforce).

Once all of these hurdles are overcome by a worker seeking to collect unpaid wages, the process of investigating a particular claim can take as long as, or even longer than, filing a claim in district court. At times, claimants have waited a year or longer to receive a response from state investigators.<sup>96</sup> Even then, many of the same collection problems persist.

When DLLR is unable to resolve a claimant's case during the investigative process, the case will be referred to an Assistant Attorney General ("AAG") for review.<sup>97</sup> If the AAG concludes that the case has merit and is ripe for litigation, an official claim will be filed in court.<sup>98</sup> At this point, months after the initiation of a claim by a worker dependent on his earnings for basic survival, the case heads to court. However, if the employer fails to appear and a default judgment is entered against him, the worker is back to square one with his available resources fading fast.

#### V. CURRENT PROSPECTS FOR IMMIGRATION REFORM

The 110<sup>th</sup> and 111<sup>th</sup> Congress failed to pass substantial immigration reform legislation. While the House passed the Development, Relief and Education for Alien Minors ("DREAM") Act during the lame duck session in the 111<sup>th</sup> Congress, the Senate failed to pass it.<sup>99</sup> The DREAM Act, if enacted, would provide a pathway to citizenship for "a small child smuggled in [his] mother's arms . . . [to] the United States" who graduates high school with no serious criminal record and either completes two years of college or serves in the military.<sup>100</sup> It is hard to imagine that Congress could undertake any movement toward immigration reform if it could not pass the DREAM Act.

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96. See *id.* at 8–10 (attributing shortcomings in investigations to decreases in funding for wage enforcement agencies, leading to a failure to address large amounts of worker claims).

97. See MD. WAGE PAYMENT & EMPLOYMENT STANDARDS, *supra* note 91, at 5 (stating that if the Employment Standards Service of the Maryland Division of Labor and Industry fails to resolve the dispute after an investigation is conducted and efforts to settle the case are attempted, the agency may then pursue a court remedy); see also MD. CODE ANN., LAB & EMPL. § 3-507(a) (LexisNexis 2008 & Supp. 2010) (providing that the Commissioner of Labor and Industry may, after finding a violation, refer the case to the Attorney General to bring an action on behalf of the aggrieved employee).

98. See WAGE CLAIM FORM, *supra* note 92 (detailing the process followed to establish an unpaid wages claim against an employer by an employee).

99. See Michael Winerip, *Dream Act Advocate Turns Failure into Hope*, N.Y. TIMES, Feb. 21, 2011, at A10, available at <http://www.nytimes.com/2011/02/21/education/21winerip.html> (characterizing how a young activist witnessed the success of the bill in the House of Representatives and its demise in the Senate after it failed to receive the sixty votes needed in December 2010).

100. Roger Simon, *Congress Displeases on DREAM*, POLITICO, Dec. 21, 2010, available at <http://politico.com/news/stories/1210/46633.html> (characterizing the intended beneficiary of the DREAM Act).

The longer Congress remains deadlocked over immigration reform, organizing efforts at the grassroots level to continue the fight for social and political equality to empower a community of workers conditioned to tolerate abuse and expect injustice becomes increasingly critical. Changing that mindset of tolerance and inspiring trust and confidence in a system that has consciously turned its back on millions of people in need of help will not be accomplished overnight, nor will it be accomplished by a single individual or organization. Immigrants' rights groups and other grassroots organizations cannot shoulder this responsibility on their own, and it would be unwise to make such an attempt.

Legal protections for immigrant workers will continue to fall short so long as the immigrant workers themselves do not join the national discourse on immigration reform. Hopefully, immigrant workers would then capture the attention and garner the support of community leaders, judges, and Congress.

Yet, more than compassion, hope, and optimism drive the need for immigration reform. Prejudice offers indefensible reasons for opposing immigration reform, and the facts compel the need for reform. The facts are that immigrants are far more likely to contribute to society than to burden its coffers, and studies show immigrants are thirty-percent more likely to start new businesses than native-born Americans.<sup>101</sup> Studies also show that immigrants have a net positive effect on the federal budget.<sup>102</sup> Bringing undocumented workers out from the shadows and the cash economy will increase the state and federal tax base and the public coffers.

Moreover, in the realm of global commerce and innovation, immigration benefits the United States by providing "legions of unofficial ambassadors, deal-brokers, recruiters and boosters. Immigrants not only bring the best ideas from around the world to American shores, but they are also a conduit for spreading American ideas and ideals back to their homelands, thus increasing their adoptive country's soft power."<sup>103</sup> Without question, immigration reform is a matter of economic necessity, and, to the extent that both business interests and immigrant workers demand relief from outdated immigration laws, Congress will be forced to address this intractable

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101. See, e.g., SHAPIRO & VELLUCCI, *supra* note 36, at 1 (expanding upon the benefits of immigrants pointing to the success of even uneducated immigrants as entrepreneurs).

102. See, e.g., *id.* at 3 (distinguishing between the short and long term effects of immigration on government budgets indicating that, while immigration produces a small net cost in the short term, it provides a net profit over the course of an immigrant's lifetime).

103. *The Hub Nation*, *supra* note 4, at 32.

problem.<sup>104</sup> Nonetheless, with the current political climate and the recent refusal by Congress to support passage of the DREAM Act, the much needed overhaul of our immigration laws remains an uphill battle. In the meantime, it is incumbent upon federal and state authorities to support the low-wage worker community—and the public coffers—by expanding their prosecution of “wage chiseling” employers.

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104. See *Green-Card Blues: A Backlash Against Foreign Workers Dims Business Hopes for Immigration Reform*, *ECONOMIST*, Oct. 30, 2010, at 33 (speculating that President Obama might find bipartisan support for one of his legislative proposals in immigration reform because both Republicans and Democrats have an interest, albeit different ones . . . in reform).